

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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JOHN LOPEZ, JR. and ELAINE LOPEZ,

Plaintiffs,

-against-

COMPLAINT

ANN C. WALTON and DONALD T. KENNISON,

6:19-cv-727 (LEK/ATB)

Defendants.

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PLAINTIFFS DEMAND TRIAL BY JURY

Plaintiffs, by their attorneys, Flynn & Wietzke, PC, complain of the Defendants ANN C. WALTON and DONALD T. KENNISON as follows:

JURISDICTION

FIRST: Jurisdiction of the Court is based upon diversity of citizenship pursuant to 28 U.S.C. §1332 and the Court's ancillary jurisdiction.

SECOND: The amount in controversy exceeds the jurisdictional limits of this Court, exclusive of costs and interest.

PARTIES

THIRD: At all times hereinafter mentioned plaintiffs, JOHN LOPEZ, JR. and ELAINE LOPEZ were residents of Carlstadt, in the County of Bergen, State of New Jersey.

FOURTH: At all times hereinafter mentioned plaintiff, JOHN LOPEZ, JR. was, and is married to ELAINE LOPEZ, residing together as husband and wife.

FIFTH: At all times hereinafter mentioned defendant ANN C. WALTON, was a resident of Worcester, in the County of Otsego, State of New York.

SIXTH: At all times hereinafter mentioned defendant DONALD T. KENNISON, was a resident of Worcester, in the County of Otsego, State of New York.

FACTS COMMON TO ALL CAUSES OF ACTION

SEVENTH: At all times relevant, DONALD T. KENNISON was the owner of the 2012 Mini Cooper bearing license plate No. FWN3864.

EIGHTH: At all times relevant, ANN C. WALTON was the operator of the 2012 Mini Cooper bearing license plate No. FWN3864, with the knowledge and consent of the owner, DONALD T. KENNISON,

NINTH: At all times relevant, ELAINE LOPEZ was the owner of a 2004 Dodge Ram bearing the license plate No. YPT72P.

TENTH: At all times relevant, JOHN LOPEZ, JR. was the operator of a 2004 Dodge Ram bearing the license plate No. YPT72P.

ELEVENTH: At all times relevant, W. Main Street, was a public road in the County of Schoharie, State of New York.

TWELFTH: On February 17, 2018 at approximately 6:08 P.M., the defendant, ANN C. WALTON was operating the aforementioned 2012 Mini Cooper west on W. Main Street.

THIRTEENTH: On February 17, 2018 at approximately 6:08 P.M., the plaintiff JOHN LOPEZ, JR. was parked on the north shoulder of West Main Street with his hazard lights turned on.

FOURTEENTH: On February 17, 2018 at approximately 6:08 P.M., the aforementioned 2012 Mini Cooper owned by defendant DONALD T. KENNISON and operated by defendant ANN C. WALTON came into contact with the aforementioned 2004 Dodge Ram owned by plaintiff ELAINE LOPEZ and operated by plaintiff JOHN LOPEZ, JR.

**AS AND FOR A FIRST CAUSE OF ACTION
ON BEHALF OF JOHN LOPEZ, JR. AGAINST ANN C. WALTON**

FIFTEENTH: On February 17, 2018 at approximately 6:00 P.M., the defendant ANN C. WALTON did so negligently and carelessly conduct herself in operating her vehicle at an excessive, unlawful and dangerous rate of speed in view of the traffic conditions at that time and place; in failing to have her vehicle under control; in operating her vehicle in a manner inconsistent with vehicle and traffic laws; in operating

her vehicle while under the influence of alcohol; and, driving her vehicle in such a negligent manner that she struck plaintiff's vehicle causing plaintiff's vehicle complete rear damage, all of which caused the plaintiff to suffer severe and disabling injuries, including but not limited to torn left rotator cuff; bilateral carpal tunnel syndrome and herniated discs at C2-C3 and C5-C6.

SIXTEENTH: As a result of the foregoing, the plaintiff JOHN LOPEZ, JR., sustained a serious injury as defined in Subdivision Four of Section Six Hundred Seventy-One of the Insurance Law of the State of New York.

SEVENTEENTH: As a result of the acts of negligence alleged herein, the plaintiff has been compelled to incur or become liable for great expense for medical and surgical treatment, hospital care and medicines and will be compelled to incur further expenses in the future for these purposes.

EIGHTEENTH: That as a result of the foregoing, plaintiff JOHN LOPEZ, JR., sustained economic loss greater than basic economic loss, as defined in Subdivision One of Section Six Hundred Seventy-One of the Insurance Law of the State of New York.

NINETEENTH: As a result of the foregoing, plaintiff JOHN LOPEZ, JR. sustained non-economic loss as defined in Subdivision Three of Section Six Hundred Seventy-One of the Insurance Law of the State of New York.

TWENTIETH: That as a result of said negligence, plaintiff JOHN LOPEZ, JR. was caused to suffer damages estimated to be in the amount in excess of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

**AS AND FOR A SECOND CAUSE OF ACTION
ON BEHALF OF JOHN LOPEZ, JR. AGAINST DONALD T. KENNISON**

TWENTY-FIRST: Plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth at length herein.

TWENTY-SECOND: On February 17, 2018 at approximately 6:08 P.M., the defendant DONALD T. KENNISON allowed ANN C. WALTON, to so negligently and carelessly conduct herself in operating his vehicle at an excessive, unlawful and dangerous rate of speed in view of the traffic conditions at that time

and place; in failing to have his vehicle under control; in operating the vehicle in violation of pertinent vehicle and traffic laws; in allowing ANN C. WALTON to drive while under the influence of alcohol; and, driving his vehicle in such a negligent manner that he struck plaintiff's vehicle causing full frontal damage, all of which caused the plaintiff to suffer severe and disabling injuries, including but not limited torn left rotator cuff; bilateral carpal tunnel syndrome and herniated discs at C2-C3 and C5-C6.

TWENTY-THIRD: As a result of the foregoing, the plaintiff JOHN LOPEZ, JR., sustained a serious injury as defined in Subdivision Four of Section Six Hundred Seventy One of the Insurance Law of the State of New York.

TWENTY-FOURTH: As a result of the acts of negligence alleged herein, the plaintiff has been compelled to incur or become liable for great expense for medical and surgical treatment, hospital care and medicines and will be compelled to incur further expenses in the future for these purposes.

TWENTY-FIFTH: That as a result of the foregoing, plaintiff JOHN LOPEZ, JR., sustained economic loss greater than basic economic loss, as defined in Subdivision One of Section Six Hundred Seventy One of the Insurance Law of the State of New York.

TWENTY-SIXTH: As a result of the foregoing, plaintiff JOHN LOPEZ, JR. sustained non-economic loss as defined in Subdivision Three of Section Six Hundred Seventy One of the Insurance Law of the State of New York.

TWENTY-SEVENTH: That as a result of said negligence, plaintiff JOHN LOPEZ, JR. was caused to suffer damages estimated to be in the amount in excess of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

**AS AND FOR A THIRD CAUSE OF ACTION
ON BEHALF OF ELAINE LOPEZ AGAINST ANN C. WALTON**

TWENTY-EIGHTH: Plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth at length herein.

TWENTY-NINTH: As a result of the foregoing negligence by ANN C. WALTON, plaintiff ELAINE LOPEZ has lost the services and consortium of her husband, JOHN LOPEZ, JR.

THIRTIETH: As a result of the foregoing, plaintiff ELAINE LOPEZ is entitled to an award in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

**AS AND FOR A FOURTH CAUSE OF ACTION
ON BEHALF OF ELAINE LOPEZ AGAINST ANN C. WALTON**

THIRTY-FIRST: Plaintiffs repeat and reiterate each and every allegation contained in the foregoing paragraphs with the same force and effect as if fully set forth at length herein.

THIRTY-SECOND: As a result of the foregoing negligence by DONALD T. KENNISON, plaintiff ELAINE LOPEZ has lost the services and consortium of her husband, JOHN LOPEZ, JR.

THIRTY-THIRD: As a result of the foregoing, plaintiff ELAINE LOPEZ is entitled to an award in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

WHEREFORE, plaintiff JOHN LOPEZ, JR. demands judgment against the defendant ANN C. WALTON on the First Cause of Action in a sum in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), and, plaintiff JOHN LOPEZ, JR. demands judgment against the defendant DONALD T. KENNISON on the Second Cause of Action in a sum in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) along with the costs and disbursements of this action; Plaintiff, ELAINE LOPEZ demands judgment against the defendant ANN C. WALTON on the Third Cause of Action in a sum in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), and, plaintiff ELAINE LOPEZ demands judgment against the defendant DONALD T. KENNISON on the Fourth Cause of Action in a sum in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) along with the costs and disbursements of this action.

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By: 
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